

**BEFORE THE POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001**

Rules Pursuant to 39 U.S.C. 404a

Docket No. RM2013-4

**COMMENTS OF THE NATIONAL ASSOCIATION OF PRESORT MAILERS
(July 29, 2013)**

Pursuant to Order No. 1739, the National Association of Presort Mailers (NAPM) hereby respectfully submits these comments on the proposed rules governing complaints under 39 U.S.C. 404a.

NAPM membership includes 76 company members representing 143 mailing sites mailing in 37 states. NAPM represents mail owners preparing their own mail and mail service providers that commingle client mailings. Membership ranges from some of the largest mailers in the industry to many small business mailers providing services to their communities.

Our members interact with, and collect mail from, tens of thousands of mail consumers and combine their mail together to present it as a single mailing to the Postal Service so that the client can receive the benefits of workshare postage discounts with minimal involvement with the complex mailing standards required by the Postal Service. Collectively, NAPM represents over 30% percent of the total First-Class Letter Mail volume. We are committed to ensuring this mail remains profitable and in the Postal system. We are true partners with the Postal Service: NAPM members sell Postal Service products, our members' customers are its customers, and just like the Postal Service, without mail our members don't have a business.

I. Importance of Section 404a Regulations

Section 404a was enacted as a counterweight to the expanded pricing authority and commercial freedoms given to the Postal Service in the PAEA. Congress was concerned that without these limitations, the Postal Service might use its expanded authorities and its status as a government entity to unfairly compete in private markets. See Order 1739 at 4-5.

Congress specifically directed the Postal Regulatory Commission to prescribe rules to implement section 404a. See 39 U.S.C. § 404a(b). The proposed rules must prohibit the Postal Service from unfairly using its status as a government agency to obtain an unfair competitive advantage when it competes with private mail service providers.

The recent expansion of new service offerings that directly compete with offerings from mail service providers underscores the importance of these regulations. For example, last year the Postal Service announced the Intelligent Mail Small Business (IMsb) tool. The IMsb tool offers small business mailers direct marketing data processing services to improve address quality to help them qualify for presort and IMb discounts. The tool is intended to aid small business mailers transition to IMb and is provided at no cost. NAPM recognizes the value of improved visibility and an information rich mailstream. While NAPM supports the Postal Service's IMb initiative generally, the IMsb tool raises questions about unfair competition.

The IMsb targets the small business market, an important customer segment for many NAPM members and other mail service providers. Private market participants cannot compete with a free service being offered by the Postal Service. By introducing

a no-cost service in direct competition with the private sector, the Postal Service is establishing the terms of competition. It is difficult to understand how the Postal Service could offer the IMsb service without incurring any costs. If, in fact, the Postal Service is “selling” the IMsb service below the costs of providing the service it is engaging in predatory pricing, an inherently anticompetitive practice. Further, it is unfair to ask mail service providers to subsidize a service that is being offered in direct competition with their business. The regulations implementing section 404a should be clear that the Postal Service may not offer below cost products or services in competition with private market participants.

The Every Door Direct Mail (EDDM) service raises other issues. The EDDM service allows small business mailers to qualify for lower postage rates for local, targeted saturation mailings. The Postal Service is charging a price for the EDDM mail, but in offering the service the Postal Service is allowing some mailers to qualify for postage rates without complying with all of the eligibility rules that would normally be required. By setting different standards for those who mail through the Postal Service’s own EDDM service and those who mail through a private mail service provider the Postal Service is establishing the terms of competition. Mail service providers are justifiably concerned that relaxing mail preparation standards for mailers using the Postal Service’s service will create an unfair competitive advantage for the Postal Service. The Commission’s oversight of these types of issues is also critical. The regulations implementing section 404a should ensure that the Postal Service may not establish the terms of competition by relaxing standards and mail preparation

requirements for its own service offerings while imposing additional requirements on private market participants.

As a third and final example, many mail service providers are anxious about the Postal Service's plans for the use and dissemination of IMb data. The use of a Full Service IMb will be required for all commercial mail in January 2014. The IMb data is valuable to mailers and mail service providers. Many private companies compete in what is now a mature market for mail analytics, marketing, and business intelligence based on the mail visibility data. There is a concern that the Postal Service may seek to collect, use, or sell IMb data in a manner that will distort established competitive markets for these types of services.

For example, NAPM is concerned regarding the potential use of by/for data. The Postal Service should not be able to: (1) require mail service providers to share confidential business information that would otherwise not be voluntarily disclosed (e.g., customer list information in the by/for field), and (2) use that same information to market or sell its own products. The regulations implementing section 404a should be clear that the Postal Service may not make commercial use of confidential business information that it collects in its capacity as a government entity.

These examples and others draw attention to the need for regulations implementing section 404a. For services that relate to market dominant products the Commission's role is even more important because the Postal Service is not subject to the antitrust laws. For those issues the Commission must act as a competition regulator to enforce section 404a.

II. NAPM Supports the Optional Accelerated Procedures

Order 1739 specifically requested comments on the “balancing of the proposed benefits and burdens” of the optional accelerated procedures for complaints alleging violations of section 404a. See Order 1739 at 13. The Commission notes that the election to use the accelerated complaint procedures will require a balancing of interests. An obvious benefit of the accelerated procedures is the promise of prompt relief. The accelerated procedures may also help provide a more affordable, cost-effective means of resolving complaints. NAPM agrees that accelerated procedures may also help foster and encourage settlement or informal resolution of some claims. These are significant advantages. The disadvantages of the accelerated procedures are that they will require parties to present their case without the benefit of discovery and that they will be required to comply with stringent time frames.

On balance, NAPM believes that the disadvantages are more than outweighed by the significant benefits of prompt relief and potentially less costly resolution of claims. Most important, the accelerated procedures are optional and the choice of whether to use the accelerated procedures is exclusively within the discretion of the party bringing the claim. If the party filing the complaint believes that discovery from the Postal Service is necessary or that the compressed time frames under the accelerated procedures will prove too onerous, they can elect to use the existing complaint procedures.

NAPM appreciates the Commission's consideration of these comments.

Respectfully submitted,

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